

REMARKS

Claims 1-3, 10-11, 13-14 and new claims 25-35 will be pending upon entry of the present amendments. Claims 4-9, 12 and 15-24 have been canceled without prejudice, and new claims 25-35 have been added. The amendments are supported throughout the specification, particularly from pages 10-12 and in the Examples. No new matter has been added. Applicant respectfully requests allowance of the amended claims in view of the remarks herein.

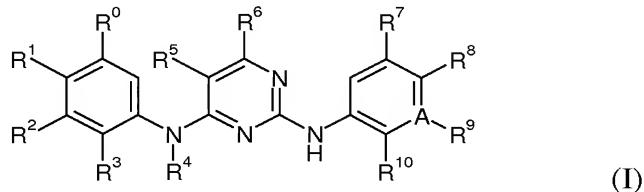
Rejections under 35 U.S.C. § 112

Claim 15 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly being non-enabled. To expedite prosecution, claim 15 has been canceled without prejudice.

Obviousness-type Double Patenting

Claims 1-11, 13-15 and 21-24 are rejected under a provisional obviousness-type double patenting, as allegedly being unpatentable over claims 1-2, 4 and 7-9 of co-pending application no. 10/507,060. Applicant respectfully requests withdrawal of this rejection in view of the amended claims.

The amended claims are drawn to compounds of Formula (I):



wherein R^3 is C_1-C_8 alkylsulfinyl, C_1-C_8 alkylsulfonyl, C_5-C_{10} arylsulfonyl, or unsubstituted or substituted carbamoyl; and R^{10} is a substituent, or R^9 and R^{10} form together with the carbon atoms to which they are attached, a 5 or 6 membered carbocyclic or heterocyclic ring. The claims in co-pending application no. 10/507,060 neither teach nor suggest a compound of Formula (I) of the present application. Thus, Applicant submits that the amended claims are non-obvious, and respectfully requests that this rejection be withdrawn.

Claims 1-11, 13-15 and 21-24 are also rejected under a provisional obviousness-type double patenting, as allegedly being unpatentable over claims 23-42 of co-pending application no. 10/568,367. As this is a provisional obviousness-type double patenting rejection over a co-pending application with a later filing date, this provisional obviousness-

type double patenting rejection should be withdrawn as to this earlier filed application upon allowance of the claims. (MPEP § 804).

Rejections under 35 U.S.C. § 103(a)

Claims 1-3, 10-11 and 13-22 are rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Davis-Ward, WO 2004/074244. Applicant respectfully requests withdrawal of this rejection in view of the amended claims.

The amended claims are drawn to compounds of Formula (I), wherein R³ is C₁-C₈alkylsulfinyl, C₁-C₈alkylsulfonyl, C₅-C₁₀arylsulfonyl, or unsubstituted or substituted carbamoyl; R⁵ is halogen; R⁶ is hydrogen; and R¹⁰ is a substituent, or R⁹ and R¹⁰ form together with the carbon atoms to which they are attached, a 5 or 6 membered carbocyclic or heterocyclic ring. The WO 2004/074244 reference neither teaches nor suggests this genus; thus, Applicant submits that the amended claims are non-obvious, and respectfully requests that this rejection be withdrawn.

Conclusion

In view of the foregoing, Applicant submits that pending claims 1-3, 10-11, 13-14 and 25-35 are now allowable. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned attorney at 858-812-1539.

Applicant authorizes the Assistant Commissioner to charge the requisite fees for this Request for Continued Examination, in the amount of \$810.00, to Deposit Account No. 50-1885. In the event that the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-1885 referencing docket No.PAT032910A-US-PCT.

Respectfully submitted,
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August 20, 2010

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